

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 26293 of 2007
With
SPECIAL CIVIL APPLICATION No. 26294 of 2007
To
SPECIAL CIVIL APPLICATION No. 26298 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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- 1 Whether Reporters of Local Papers may be
 allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the
 fair copy of the judgment ?
- 4 Whether this case involves a substantial
 question of law as to the interpretation
 of the constitution of India, 1950 or any
 order made thereunder ?
- 5 Whether it is to be circulated to the
 civil judge ?

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CHITAN JAYESHKUMAR UPADHYAY & 5 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR AV PRAJAPATI for Petitioner(s) : 1 - 6.

MR HEMANG PARIKH AGP for Respondent(s) : 1 to 4

NOTICE SERVED BY DS for Respondent(s) : 5.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 04/12/2007

ORAL JUDGMENT

1. RULE. The learned advocate appearing on behalf of respondents is directed to waive service. The group of petitions is taken up for final hearing and disposal today in light of the fact that in identical fact situation this Court has already decided the matter vide Judgment dated 27.09.2007.

2. The petitioners have challenged order dated 31.07.2007 made by respondent No.3- Board followed by order dated 31.08.2007 made by the same respondent to the extent of reducing the quantum of punishment inflicted on the petitioners. The petitioners who are students of Diploma Course took examinations in the month of May, 2007. Vide show cause notice issued on 27.06.2007 the petitioners were called upon to tender explanation in relation to alleged malpractice indulged in by the petitioners during examinations held on 14.06.2007. Thereafter, after granting an opportunity of hearing to the petitioners, the impugned orders have been made.

3. It is an accepted position between the parties that the facts and circumstances in the present petitions are identical to those which obtained in case of *Minor Mitul Manilal Patel V/s. The State of Gujarat* in Special Civil Application No.19509 of 2007. Hence, it is not necessary to set out the facts and contentions in detail. Suffice it to state that there is no distinguishing feature in the facts of the present cases and the facts of earlier matter.

4. In the Judgment rendered on 27.09.2007 in the case of *Minor Mitul Manilal Patel* (supra) it has been held as under:

(7) *When one comes to the impugned order the fact of the entire exercise being mechanical and without application of mind stands established. The order only says by way of a forwarding communication that in cases of malpractice noted during the diploma examinations in the month of May 2007, punishment is imposed as per attached statement. The annexed statement has the following columns – Case No., Name of the Institution / Center, Seat No. / Registration*

No., Name of the Student, Subject, and Punishment Imposed by the Examination Committee. There is nothing, either in the order in the form of forwarding communication or the statement, which will reflect the reasons which have weighed with the authority or the Examination Committee as to why – (1) the petitioner is held guilty; AND (2) why the particular punishment is imposed. The submission on behalf of the respondent authorities that the petitioner was heard by the Examination Sub-Committee and after considering the entire material appropriate punishment as prescribed by the relevant Government Resolution has been imposed cannot be accepted. The position in law is well settled. An order has to reflect the reasons, howsoever brief, as to why the explanation tendered by the delinquent is not acceptable, and why and how a particular quantum of punishment has been arrived at before imposing the punishment. The impugned order, if one can term the same to be an order, is entirely bereft of this basic requirement in law and cannot be sustained.

(8) The authority cannot be permitted to supply reasons subsequently. The respondent authority has sought justification of the

impugned order by making various averments in the affidavit-in-reply. This is not permissible in law. The order itself has to contain reasons.

(9) At the same time it is always open to the respondent authorities to initiate fresh action in accordance with law from the stage of show cause notice. However, this is subject to caveat that, if any fresh action is to be initiated by the respondent authorities the same shall be initiated not later than 10 (ten) days from today, with a further rider that if such fresh action is initiated, the same shall be completed within a period of 03 (three) weeks from the date of initiation.

5. The same directions shall mutatis mutandis apply in the present cases. Accordingly, subject to aforesaid directions, the petition is allowed. The impugned orders dated 31.07.2007 and 31.08.2007 are hereby quashed and set aside only to the extent the orders are applicable in case of each of the petitioners. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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